

1 director could have. Mike didn't agree.

2 I had tried to change his mind on several  
3 occasions, much lesser important things than personnel. But  
4 Mike's mind -- when he made up his mind, it wasn't changed.  
5 That was just the nature -- his nature.

6 BY MR. MASTANDO:

7 Q Do you recall Mike Steel?

8 A Yes. He was a -- actually, he took over after  
9 Todd Hohlman was let go at WZZQ. That would have been  
10 February - March of '92.

11 Q Was that his on-air name?

12 A Mike Steel. Yeah, that was his --

13 Q His real name?

14 A That was his on-air name.

15 Q Do you know his real name?

16 A Mike something. Mike something. I can't  
17 remember. A lot of DJs keep their first name and then add  
18 something else, except me.

19 Q Does Mike McMillan sound familiar to you?

20 A Yeah, that does actually. Yeah.

21 Q Do you know how Mike Steel was hired?

22 A Yeah, Mike found him over at --

23 Q Pardon? By Mike?

24 A I'm sorry.

25 Mike Rice found him over at -- it's an FM station,

1 FM-99 in Warrenton, Missouri. He was working over there.  
2 It was a top 40 station. He heard him on the air and gave  
3 him a call, or the guy contacted him first and said, "Listen  
4 to me on the air," one of the two. I can't recall which,  
5 which that happened.

6 And so Mike, you know, got in touch with the guy,  
7 met with him, talked with him. kind of got some of his  
8 programming philosophies. One of the things Mike really  
9 liked about him was his ability to -- his concept of  
10 promotions. Promotions was always a very important part of  
11 our stations. And coming from a top 40 background, Mike  
12 preferred that too in a disc jockey, because they had more  
13 energy than like a laid back high sounding AOR jock.

14 Q How do you know these things?

15 A Oh, these were just things we always talked about.  
16 You know, Mike always communicated that, you know, when I  
17 was looking for disc jockeys and things of that nature.

18 So Mike Rice talked to the guy, and asked him to  
19 come on over to Terre Haute and be a PD there. And told him  
20 Janet would take care of -- take care of the hiring, or told  
21 me that Janet would take care of the hiring.

22 Q Did Michael Rice ever talk to you about Mike  
23 Steel's job performance?

24 A Oh, he hated the guy. He -- well, to avoid making  
25 the story too long, Mike Steel went into the station and

1     instead of keeping it focused on rock, dropped the AOR  
2     reporting status to radio and records, and in favor of  
3     becoming at a future date a top 40, a CHR reporter to R&R.  
4     Mike was furious because, you know, as he put it, none of  
5     his stations have ever played top 40 since the sixties when  
6     he had the AM station in St. Charles. And his stations were  
7     rock stations. He doesn't have any country stations. He  
8     doesn't have any top 40 stations. We are none of that. We  
9     are rock. We are a rock company. I mean, that's the way he  
10    looked at it.

11                 And he was furious at the guy.

12                 Q     How do you know he was furious?

13                 A     Excuse me?

14                 Q     How do you know he was furious?

15                 A     Oh, I mean, just boisterous, real -- it was a  
16     phone conversation. And I had enough phone conversations  
17     with Mike I could kind of tell his moods. But he was really  
18     angry at this guy and wanted him gone immediately.

19                 And so we started looking out for somebody else,  
20     finding somebody else. And he found another guy, but I  
21     don't remember how he found that guy, Mark Savage. Yeah,  
22     Mark Savage followed Mike Steel.

23                 So anyway, Mike Steel ended up getting fired as  
24     well.

25                 MR. MASTANDO: Just a minute, Your Honor.

1 JUDGE STEINBERG: Just to clarify, when you said  
2 he was furious, he was mad, he was this and that, that's  
3 your perception of his state of mind, that's the way you  
4 perceived it?

5 THE WITNESS: Well, I guess I'm a little confused  
6 because that's really the way it was. I mean, he was really  
7 angry.

8 JUDGE STEINBERG: Okay.

9 (Pause.)

10 BY MR. MASTANDO:

11 Q Do you know who fired Mike Steel?

12 A No, I don't know. No, I don't know who fired Mike  
13 Steel.

14 Q Did you fire Mike Steel?

15 A No, I didn't.

16 Q Do you recall a Sean Madden?

17 A Yes, Sean worked at -- his own name was Sean  
18 Michaels. Sean Madden worked at KFMZ. He was an evening  
19 guy and then the morning guy and then an evening guy again.  
20 And I am trying to remember when he was there. Part of '91,  
21 '92, end of '92.

22 Q Okay. Did Rice ever talk to you about Sean  
23 Madden's job performance?

24 A He didn't care for the way the guy sounded on the  
25 air.

1 Q When would he have expressed this to you?

2 A Would he have?

3 Q When did he express this to you?

4 A Oh, he expressed it several times. And the last  
5 time -- while Sean still worked there, the last time that he  
6 expressed it was at the company Christmas -- or at the  
7 station Christmas party in '92, December of '92.

8 And it wasn't so much his on-air -- well, you  
9 know, he mentioned he didn't like him on the air, but it was  
10 more his personality as a person he didn't like. He thought  
11 the guy was aloof. He was a very tall guy, and he would  
12 kind of -- I didn't realize this till Mike told me this, but  
13 he would kind of accentuate his height, you know, by  
14 standing extra erect, you know, and folding his shoulders  
15 around his arms, and hoisting back his shoulders a little  
16 bit. And Mike just thought he was too aloof and he needed  
17 to go. He needed to be let go too.

18 Q How do you know that?

19 A He told me so at the Christmas party.

20 JUDGE STEINBERG: Mike?

21 THE WITNESS: I'm sorry.

22 Mike Rice did.

23 BY MR. MASTANDO:

24 Q So were you ever searching for a replacement for  
25 Sean Madden?

1           A     I had a -- there was a problem with letting Sean  
2 go because he and Sally, Sally Chase; on the air, Sally  
3 Orzel; off the air, Sally Chase; were boyfriend and  
4 girlfriend. Sally worked the afternoon shift, Sean worked  
5 the evening shift, and they were living together.

6                     My concern was that if I let Sean go, I was afraid  
7 I would lose Sally. So I called Janet Cox and asked her, I  
8 said, you know, well first of all, "Is there anything that  
9 we can do to try to keep Sally or what do you recommend, you  
10 know, from this?"

11                    I mean, it was one of those management questions I  
12 needed a really sharp answer to because this was a real  
13 difficult situation. The last thing you want to do is lose  
14 two of your prime time jocks at one time.

15                    She said that I should just start doing a search  
16 for both of them at that point, in preparation for Sally to  
17 leave, and didn't really provide any positive tones about  
18 Sally staying through that. She pretty much said that,  
19 "Well, she will leave so be prepared."

20           Q     Did you express your concerns to Michael Rice?

21           A     About that?

22                    Oh, yes, I did.

23           Q     What was his reaction?

24           A     I don't recall his reaction, but it couldn't have  
25 been enough information or else I wouldn't have called Janet

1 about it.

2 Q Did you agree with the directions to fire Sean  
3 Madden?

4 A Sean was a difficult personality to get along  
5 with. I would call him negative-aggressive. I don't know.  
6 I don't know if I have ever called him that to his face so  
7 I probably shouldn't say it here. But he was difficult to  
8 get along with. And so I didn't really care one way or the  
9 other. However, I did not want to lose Sally Chase. She  
10 and I had been partners on the morning show for years, and  
11 wanted her to stay at the station. I thought she was an  
12 important asset.

13 Q Did you fire Sean Madden?

14 A No. He quit. He found a job in Detroit and left  
15 the first of the year. And the reason why he quit, he was  
16 frustrated with the company. So not only I guess was Mike  
17 frustrated with him, or didn't like him, but Sean was  
18 frustrated with the company too. caused we had moved him  
19 from mornings to evenings.

20 Q How do you know he was frustrated?

21 A Oh, well, I guess you've asked me that he's  
22 furious too. You know, you just work around people, you  
23 kind of have a good feeling about what their emotions are, I  
24 guess, to the extent that it's displayed.

25 Q So approximately how long after the Christmas

1 party did he leave?

2 A Within a -- well, you know, I don't remember when  
3 that Christmas party was that year. I am thinking it had to  
4 be within a couple of weeks

5 Q Do you recall Jeff Davis?

6 A Yes. Yeah, his real name is Jeff Presley. And  
7 Jeff worked evenings for me at KFMZ.

8 Q Did Michael Rice ever talk to you about Jeff  
9 Davis's job performance?

10 A Yes.

11 Q What did he say?

12 A He said he thought Jeff was too old for the  
13 nighttime position. Jeff is a guy about 34 or 35 at the  
14 time, and, you know, a little more youth oriented target to  
15 the format at night; a lot more new music. And Mike just  
16 thought he was too old and was bringing the nights down;  
17 didn't have enough energy for the nights.

18 Q When did he express this to you?

19 A I think it was August of -- August of '93. Maybe  
20 a little -- yeah, August of '93. That's about right.

21 Q Did Michael Rice ever direct or suggest to you  
22 that Jeff Davis was to be fired?

23 A Yeah. Again, you know, said you need to get a  
24 replacement for him. You need to let him go.

25 I mean, those are -- those are often heard



1 phrases, or he's got to go, she's got to go. I mean, those  
2 are phrases that probably came up in all the conversations  
3 about anybody that was let go that you have mentioned so  
4 far.

5 Q Did you fired Jeff Davis?

6 A Yes and no. It was kind of a mutually agreed to  
7 thing. Jeff and I had worked too many years together.  
8 Twice at KFMZ. And it was one of those things where  
9 management became too friendly with the employees. It was a  
10 little more difficult to let him go. So he and I had a sit  
11 down, and we talked. I told him the situation. I said,  
12 "Mike doesn't want you on the air at night. That's just all  
13 there is. And I don't have another position, and I'm going  
14 to have to let you go," I said. "So let's come to this  
15 agreeable date," which I think we set around October the 1st  
16 of '93. "And you start looking for work, and I will start  
17 looking for somebody to take your place."

18 Q Did you agree with Rice's decision to fire Jeff  
19 Davis?

20 A No, I didn't, and that was pretty painful.  
21 Actually, most of them are pretty painful terminations.

22 Q Okay, do you recall a Ben Orzeske or Ben Jacobs?

23 A Yeah, he was the program director at WZZQ.  
24 Started at KFMZ at nights, and then I moved him over to  
25 WZZQ.

1           Q     Did Michael Rice talk to you about Ben's job  
2 performance?

3           A     Yeah. He was for moving Ben over to Terre Haute.

4           Q     About when was this?

5           A     That would have been -- well, it was November of  
6 '92.

7           Q     You said that he was for it. How did he express  
8 this to you?

9           A     Oh, I had suggested that -- it was during our  
10 discussions about Mike Savage having to be fired, having to  
11 go. And I had suggested at that point that Ben Jacobs be  
12 sent over there to do the -- to be the program director.  
13 Mike wanted to think about it. And within the next week or  
14 so we talked again about it, and he thought that that would  
15 work. So that's what I mean by Mike being for it.

16          Q     Did Michael Rice comment on any decisions that Ben  
17 Orzeske made?

18          A     Well, there was a -- it turned out to be a real  
19 personal thing between Mike and Ben, because Ben and Mike  
20 and I flew up to Chicago to meet with the guy that did our  
21 station -- he was our station voice. You know, the guy with  
22 the big voice you hear on the station. And we had flown up  
23 there. And during the flight we were just having, you know,  
24 casual conversation. You know, it was one of those let's  
25 just get together and talk radio type of discussions.

1           And Ben brought up some specific questions that he  
2    had regarding moving around. I think it had to do with  
3    moving around a news person to a sports position in the  
4    afternoon, or to a news position in the afternoon, something  
5    of that nature.

6           Mike thought that that sounded like a good idea.  
7    So when we came back from the flight, Ben goes back over to  
8    Terre Haute and makes the change. Mike construed that as a  
9    betrayal to what was a casual conversation. Because he took  
10   that personally thinking -- I'm sorry.

11          Q     How do you know he took it personally? How do you  
12   know that he felt it was a betrayal?

13          A     Oh, he told me so. He said, you know, "I really  
14   take that kind of thing personally." That was something he  
15   actually told me. "Whenever somebody takes something I say  
16   and think it's a done deal."

17                And I said, "What do you mean by that?"

18                And he said that, "You know, we were just having a  
19   friendly discussion there about it, and it sounded like a  
20   good idea, but I would like to discuss things more often  
21   that that." So he was very upset about that.

22                And it's like from then on Mike wouldn't give Ben  
23   a break on any little mistake that he would make.

24          Q     Did Michael Rice ever direct or suggest to you  
25   that Ben Orzeske was to be fired?

1           A     Yeah. As a matter of fact he -- because -- it's  
2     kind of like the John Rhea thing, because Janet had hired  
3     John Rhea. It was his guy has got to go. In this case, it  
4     was my boy has got to go. You know, "Your boy has got to  
5     go" is the way Mike told me, because I was the one that got  
6     Ben over there.

7           Q     And how soon after the Chicago incident did  
8     Michael Rice -- what period of time lapsed between that and  
9     him directing you to fire Ben?

10          A     I didn't fire him  
11                 Ben Jacobs?

12          Q     Well, did ---

13          A     I'm sorry. I thought you said that I had fired  
14     him.

15          Q     No, that he suggested or directed you to fire Ben  
16     Orzeske?

17          A     Oh, he didn't direct me actually to fire him, but  
18     he did tell me that he needs to -- you know, "Your boy has  
19     got to go." And after we had that conversation, then it was  
20     within a week or two that he was actually fired.

21                 JUDGE STEINBERG: But you didn't fire him?

22                 THE WITNESS: No, I didn't.

23                 JUDGE STEINBERG: Do you know who did?

24                 THE WITNESS: Well, I just believe it was Ken  
25     Brown.

1 JUDGE STEINBERG: But you don't know?

2 THE WITNESS: No, I don't know for certain, I  
3 guess.

4 BY MR. MASTANDO:

5 Q When Michael Rice gave you instructions, did you  
6 feel compelled to obey them?

7 MR. GAFFNEY: Objection.

8 JUDGE STEINBERG: What basis?

9 MR. GAFFNEY: What instructions, that's a pretty  
10 broad question unless he has a specific instruction in mind.

11 JUDGE STEINBERG: No, he can say in general. You  
12 can reword it and then you can come from general to  
13 specific, but put it in the context.

14 BY MR. MASTANDO:

15 Q When Michael Rice gave you suggestions or  
16 directions about programming, did you feel compelled to obey  
17 after the hospitalization in April of 1991?

18 A Oh, absolutely. Yeah

19 Q When Michael Rice gave you directions or  
20 suggestions about personnel, did you feel compelled to obey  
21 those?

22 A Yeah. I mean, when Mike -- when Mike said a  
23 decision was made, the decision was final, and that had to  
24 be done.

25 Q After April of 1991, when Michael Rice would give

1     you directions about format fine tuning, did you feel  
2     compelled to obey those directions?

3             A     Oh, yes, absolutely

4                     I mean, Mike -- Mike was my boss. I mean, he was  
5     my programming guy. I mean, Mike and I worked on  
6     programming constantly together, and Mike was the owner of  
7     the station, and there was no doubt that whatever he said is  
8     what went final, period, that's it, it's done.

9             MR. MASTANDO: I have no further questions, Your  
10    Honor.

11            JUDGE STEINBERG: Okay, why don't we take a break  
12    at this point.

13                    Let me just ask Mr. Gaffney. Do you and Ms.  
14    Sadowsky need to huddle together for an extended period of  
15    time to do your cross?

16            MR. GAFFNEY: I don't think so, Your Honor.

17            JUDGE STEINBERG: How about 10 minutes? We'll  
18    come back at five after.

19                    (Whereupon, a recess was taken.)

20            JUDGE STEINBERG: Back on the record.

21                    Mr. Gaffney.

22            MR. GAFFNEY: I would just like to reiterate our  
23    objection, Your Honor, to testimony of this witness, and  
24    move to strike it in its entirety as it is evidence not in  
25    the nature of rebuttal, but rather evidence that should have

1     been presented in the case in chief of the Mass Media  
2     Bureau.

3             They have the burden of proving these items. This  
4     witness has testified to Mr. Rice's involvement in the  
5     stations. The issue they had to prove was Mike Rice's  
6     involvement in the stations.

7             There were a series of incidences throughout the  
8     testimony of this witness where he testified to events that  
9     were not even raised in the testimony of Ms. Cox. So they  
10    cannot rebut back. If they were not raised in the direct  
11    case that we presented for the first time, which is the  
12    nature of rebuttal evidence, to rebut evidence that was  
13    brought up by the Licensees for the first time in their  
14    direct case.

15            These are all matters that were -- under which the  
16    Bureau had an obligation to present in their case in chief.  
17    We didn't get discovery on these matters with regard to  
18    answers to interrogatories. We didn't get timely  
19    disclosures of the witness's testimony. And, indeed, the  
20    Bureau can't contend that this witness was known to them  
21    late. In fact, the Bureau was about to present this witness  
22    as a case-in-chief witness. Then withdrew him. Call him as  
23    a rebuttal witness in order not to have to provide to us an  
24    adequate summary of his testimony.

25            What this has in effect done in the extreme

1 prejudice other than the untimeliness of receiving this  
2 information, and that is, you know, virtually for the first  
3 time, well after the cases were submitted, was that it now  
4 shifts the burden of proof effectively to the Licensees.

5 We have now before us an entirely different case  
6 than what the Bureau was supposed to bring in in its first  
7 case in chief. It didn't bring in parts of the case. It  
8 waited, it waited until it saw and was able to review the  
9 direct case of the Licensees, and then came in with  
10 additional evidence, and it was evidence for their case in  
11 chief, Your Honor.

12 Just calling this witness as a rebuttal witness  
13 doesn't change the nature of this evidence. And I have some  
14 case cites for the Court just to give you a flavor. I am  
15 sure the Court is familiar with what a rebuttal witness is  
16 and allow the rebuttal witness testimony is in the case of  
17 Cooper v. Safeway Stores, 629 Atlantic 2nd 31, a District of  
18 Columbia Court of Appeals case. On page, I believe, 35  
19 thereof, the court says that courts generally exclude  
20 evidence such as this unless sufficient reason is offered  
21 for not introducing it at the proper time. A plaintiff may  
22 not reopen his or her main case under the guise of rebuttal.

23 That is what has happened here. The Bureau has  
24 effectively reopened its initial case by bringing in more  
25 evidence that should have been -- I should say evidence for



1 the first time, that should have been timely presented, and  
2 for which we could -- the Licensees could have tailored  
3 their direct case going in, and could respond to that.

4 It's that kind of prejudice that effectively now  
5 just flips this over and makes it our burden of proving that  
6 what the rebuttal is is wrong. That's what we are faced  
7 with now.

8 JUDGE STEINBERG: Okay, just one quick observation  
9 is that -- well, I will not do it. I will let Bureau  
10 respond and keep my observations to myself.

11 MR. MASTANDO: Your Honor, it's the direct  
12 testimony of Janet Cox at various intervals -- I will just,  
13 for example, point out paragraph 27 of Contemporary Exhibit  
14 1. It says that, "Specifically, he," meaning Michael Rice,  
15 "had no involvement in personnel and programming decisions."

16 Paul Hanks has testified today that he did in fact  
17 have involvement in personnel and programming decisions to  
18 rebut that presumption.

19 There are a number of other instances in which the  
20 Licensees say that Michael Rice did not come into the  
21 station -- involved in the station's management, policy-  
22 making or day-to-day operations, to wit paragraph 24 says,  
23 "However, with Michael Rice's exclusion from involvement in  
24 managerial affairs, the Licensees, in April 1991, she  
25 assumed additional responsibility."

1 I would assert that this, in fact, is rebutting  
2 those statements and many other similar statements that Ms.  
3 Cox made while on the stand under cross-examination a few  
4 weeks back during the proceeding

5 MR. GAFFNEY: Your Honor, the Bureau --

6 JUDGE STEINBERG: Wait, wait. You had your  
7 opportunity.

8 MR. GAFFNEY: I'm sorry, Your Honor.

9 MR. MASTANDO: Also they have had an opportunity  
10 to depose Leon Paul Hanks. They have not. They have  
11 interviewed him though, so they have contacted him and asked  
12 him questions. Specifically

13 JUDGE STEINBERG: Well, how do you know that? Did  
14 Mr. Hanks tell you? Because I don't know that.

15 MR. MASTANDO: Mr. Gaffney told Bob Zauner that --

16 JUDGE STEINBERG: Okay, are you finished?

17 I think this is proper rebuttal for the reasons  
18 that Mr. Mastando stated. And I reviewed Ms. Cox's  
19 testimony and there was testimony concerning whether or not  
20 Mr. Rice was involved in programming decisions, involved in  
21 hiring and firing decisions. There was testimony  
22 concerning, just as an example, the trip that they went out  
23 from St. Peters to the firing of Rhea, and there were  
24 specific questions about was this discussed during the trip.  
25 And she said, no, it wasn't.

1           And there were specific testimony concerning the  
2 meetings with station staff. There was a representation  
3 that there was a meeting with station staff, that -- unless  
4 I misread it or unless I am not remembering correctly --  
5 meetings with station staff concerning Mr. Rice's  
6 involvement.

7           There was testimony about Mike Steel, whatever his  
8 name was; testimony about Sean Madden and Sally. There was  
9 testimony about Ben Jacobs. Jeff Davis, I don't remember,  
10 cause but I think he was the president of the confederacy,  
11 and I think I would have remember that.

12           But I think that the overwhelming portion of the  
13 testimony of Mr. Hanks, if not all of it, is proper  
14 rebuttal.

15           Whether it could have been presented on -- sure,  
16 it could have been presented as part of the direct case  
17 exhibits, or as part of the direct case. I mean, they were  
18 originally planning on introducing him as a witness. You  
19 wouldn't have gotten probably any notice to what he was  
20 testifying to. You would have gotten a more detailed  
21 outline.

22           Remember, we had that telephone conversation  
23 where --

24           MR. GAFFNEY: And we would have known prior to the  
25 admissions session what their case was. We didn't know. We

1 are learning it after.

2 JUDGE STEINBERG: Well, okay. You noticed him for  
3 deposition, didn't you?

4 MR. GAFFNEY: Yes, Your Honor.

5 JUDGE STEINBERG: You didn't depose him.

6 MR. GAFFNEY: No, we spoke to him as the Bureau  
7 represents.

8 JUDGE STEINBERG: Okay. So you spoke to him. But  
9 you could have deposed him. You could have asked these  
10 questions.

11 I mean, I don't want to get into an argument about  
12 this now. His testimony has been -- you can tell me.

13 MS. SADOWSKY: Your Honor, excuse me.

14 Our point is that everything we've learned about  
15 Mr. Hanks and Mr. Rhea have been after the direct cases went  
16 in. We learned nothing about them or their testimony in the  
17 discovery that was served on the Bureau.

18 And is that fair when they are coming up with  
19 testimony which is clearly --

20 JUDGE STEINBERG: Well, let me ask you. Do you  
21 need more time to prepare for his cross-examination?

22 It's a simple question.

23 (Pause.)

24 JUDGE STEINBERG: Do you need to make some phone  
25 calls, confer with Ms. Cox, confer with some other people?

1 Perhaps confer with Mr. Rice?

2 MR. GAFFNEY: Well, Your Honor, what your  
3 suggestion is, is that if we take more time to prepare for  
4 the cross-examination of this witness --

5 JUDGE STEINBERG: I'm just asking do you need more  
6 time. A simple question.

7 MR. GAFFNEY: Well, if Your Honor is giving us  
8 that option, we would like a minute to discuss it.

9 JUDGE STEINBERG: We'll go off the record.

10 (Pause off the record.)

11 JUDGE STEINBERG: Okay, we are back on the record.  
12 We never really did go off the record.

13 But when we were discussing -- we had at least  
14 one telephone conversation concerning the depositions and  
15 the timing of the depositions, et cetera. This is  
16 conference calls among counsel and myself. And one of the  
17 options that I think I said to you is that I would give you  
18 broad -- if you didn't want to take the deposition of the  
19 witnesses, I would give you broad leeway in cross-examining;  
20 is that correct?

21 MS. SADOWSKY: Yes.

22 JUDGE STEINBERG: And that I would give you, if  
23 you wanted, an opportunity to confer with your client before  
24 cross-examining. I mean, is that -- isn't that what I  
25 offered you?

1 MR. GAFFNEY: Yes, Your Honor.

2 JUDGE STEINBERG: Okay. Now I am making good on  
3 my offer. If you think it would be to your benefit to  
4 confer with your client for awhile and structure cross-  
5 examination for the witness, then we will do that.

6 If you want to proceed, we can proceed. It's up  
7 to you. But that was an alternative to deposing him.

8 MR. GAFFNEY: But the manner in which the  
9 proceedings and the order in which the proceedings have  
10 occurred now insofar as the Bureau being obliged to present  
11 their direct case and carry their burden of proof is not  
12 remedied by giving us more time for cross-examination.

13 JUDGE STEINBERG: There are remedies. You can  
14 cross-examine and then there are -- you can, at the  
15 appropriate time, ask for remedies.

16 MR. GAFFNEY: And the remedy that is the nature of  
17 my objection is a motion to strike the testimony as --

18 JUDGE STEINBERG: Okay. Well, that I am not going  
19 to do, and one of the reasons I am not going to do it is  
20 because one of my obligations is the compilation of a full  
21 and complete record. And I think that some of the  
22 information that was testified to today assists in the  
23 compilation of a full and complete record, and I am just not  
24 going to strike the testimony

25 Plus, I think it's proper rebuttal. I mean, there

1 is a fine line. Yes, I agree, this could have been  
2 presented as direct case testimony. No question about it.  
3 But it's also proper rebuttal

4 So we will go off the record.

5 (Whereupon, a recess was taken.)

6 MR. GAFFNEY: I guess what we want to preserve,  
7 and I think Your Honor might have suggested this in prior  
8 hearings, is that we have the opportunity at this date to  
9 present surrebuttal. I don't think giving me more time to  
10 structure my cross-examination of the witness is going to,  
11 frankly, remedy the situation or help the Licensees at all.

12 But the ability to present surrebuttal witnesses  
13 about this testimony, since we have heard it here for the  
14 first time, is something that we would reserve the right to  
15 do.

16 JUDGE STEINBERG: Well, you can certainly ask for  
17 it at the appropriate time, and then we will argue about it,  
18 then I'll rule.

19 But the answer is you don't need more time to  
20 prepare cross?

21 MR. GAFFNEY: No.

22 JUDGE STEINBERG: Okay. Okay, let me just --  
23 there was one thing that I wanted to clarify, and that was  
24 this -- the lawsuit against the stations for discrimination  
25 in your termination?

1 THE WITNESS: Yes.

2 JUDGE STEINBERG: Okay, that's your lawsuit  
3 against the stations? You initiated that?

4 THE WITNESS: Yes, that's my personal action.

5 JUDGE STEINBERG: Okay I don't think -- I don't  
6 know if that was clear. I mean, I knew it but --

7 REBUTTAL CROSS-EXAMINATION

8 BY MR. GAFFNEY:

9 Q Mr. Hanks, I am Michael Gaffney. I represent the  
10 Licensees in this case.

11 Have we spoken before?

12 A Yes, we have.

13 Q And we did talk about your relationship with  
14 Michael Rice?

15 A Yes.

16 Q You said he was your friend?

17 A Yeah, I would consider him a professional friend.

18 Q Okay. And your relationship goes back to the mid  
19 eighties, doesn't it?

20 A Yes. I started working for him in '85.

21 Q And how many of your conversations -- you  
22 testified that you had many conversations with Michael Rice  
23 over the course of your working for Contemporary; isn't that  
24 correct?

25 A Yes, that is correct.



1           Q     And in fact there was more times you had  
2     conversations from the time you were hired in the mid  
3     eighties up until Mike went into the hospital in 1991 than  
4     the period of time after he got out of the hospital in '91  
5     until the time you were fired, right?

6           A     I don't know if I understand your question.

7           Q     What's the bigger time frame?

8           A     The bigger time frame would have been after,  
9     because we did not have phone conversations until I became  
10    program director, and that was February of '89.

11          Q     Did you have any conversations before February of  
12    '89?

13          A     When he would visit the station, yes, he would pat  
14    me on the back saying, "That's a good job." You know, kind  
15    of a morale booster for the station.

16          Q     Okay.

17          A     However, the conversations became more programming  
18    related when I became program director.

19          Q     And he was a professional friend prior to being --  
20    prior to having your position as a program director in  
21    February of '89?

22          A     No, what I mean by professional friendship is in  
23    the work place we were friends. We did not pal around  
24    together out of the work place.

25                 And what I mean also then by friends, to define